



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

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ATTORNEY GENERAL

March 18, 1957

Hon. Paul Brashear, Chairman
Military and Veterans'
Affairs Committee
House of Representatives
Austin, Texas

Opinion No. WW-62

Re: Whether or not H.B. 416,
as amended, will adverse-
ly affect the issuance of
bonds by the Armory Board.

Dear Mr. Brashear:

The question presented is whether H.B. 416, as amended by Committee, will affect the power to issue bonds by the Texas National Guard Armory Board.

The Armory Board was created by the 44th Legislature, 1935, General Laws, Chapter 184, and codified by Vernon as Article 5890b.

The Act prescribes board membership; mode of qualification and certification; the means for the expression of its official acts; constitutes the board "a body politic and corporate," outlines its duties and powers, including that of borrowing money, issuing and selling bonds, debentures and other evidences of indebtedness; and prescribes for management and disposition of property acquired by the Board.

Insofar as pertinent, H.B. 416, as proposed, would work certain changes in Section 1 of Article 5890b. They follow in resume:

(a) The board remains the same numerically but its personnel is to be changed as vacancies occur in the current membership.

(b) The current statute provides for a six-year membership term, while H.B. 416 contains no specific term of years.

(c) Article 5890b provides for an oath of office; H.B. 416 does not.

Article XVI, Sections 30 and 30a, Constitution of Texas, place restrictions on terms of state offices. Section 30

provides that the duration of all offices not fixed by the Constitution shall never exceed two years and excepts the Railroad Commission. Section 30a specifies a six-year term for named board members and a like term for "such boards as have been, or may hereafter be, established by law"

Generally, public offices may be classified as those civil and military. 42 Am.Jur., Public Officers, Sec. 17. The Supreme Court of Texas in Texas Nat. Guard Armory Board v. McCraw, 132 Tex. 613, 126 S.W. 2d 627 (1939), held that membership on the Texas National Guard Armory Board was a military office and, therefore, the constitutional provisions (Article 16, Sections 30, 30-2) are not applicable; consequently, the fact that H.B. 416 imposes no fixed year-terms on board membership has no bearing on the validity of the organization of the Board and its power to function. See also Ex parte Archie Dailey, 93 Tex. Cr. R. 68, 246 S.W. 91 (1922) 26 ALR 138.

The reasoning of the Court in the McCraw and Dailey cases, supra, excludes the necessity of the prospective members of said Board from taking the usual constitutional oath of office (required by Article XVI, Section 1), since that office is military and not civil by nature and therefore without the purview of said constitutional proviso.

The other changes affected by H.B. 416 are minor and inconsequential insofar as they might have any possible bearing on the Board's bond issuing powers.

SUMMARY

H.B. 416, as proposed, will not adversely affect the issuance of bonds by the Texas National Guard Armory Board.

Very truly yours,

WILL WILSON
Attorney General

By 
Grundy Williams
Assistant

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APPROVED:
OPINION COMMITTEE

H. Grady Chandler, Chairman